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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.2326 of 1993

Writ Petition No.2330 of 1993

Writ Petition No.2323 of 1993

Writ Petition No.2327 of 1993

Writ Petition No.2328 of 1993

Writ Petition No.2329 of 1993

Writ Petition No.2331 of 1993

Writ Petition No.2332 of 1993

Writ Petition No.2333 of 1993

Writ Petition No.2334 of 1993

Writ Petition No.2335 of 1993

Writ Petition No.2336 of 1993

Writ Petition No.3841 of 1993

Writ Petition No.3857 of 1993

Writ Petition No.3861 of 1993

ORDER

Post for 09/05/2007.

Sd/-
Chief Justice

08/05/2007.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.2326 of 1993

Petitioner South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents Legal heirs of respondent No.1

i Smt. Jagni Devi W/o late B Thakur aged 62 years.

ii Rajkumar Thakur, S/o late B Thakur aged 38 years

iii Vinay Kumar Thakur, S/o late B Thakur

All R/o SECL Jopri, Post, Banki Mongra, Distt. Korba (CG)

2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur).
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2330 of 1993

Petitioner South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Md Sadique Miha, S/o Late Pokhan, Qr No.B/18, Subhash Block, Korba, PO Korba Colliery, Distt.Bilaspur
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur).
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2323 of 1993

Petitioner South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

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Respondents

1. Chundi Lohar S/o. Late Gopi Lohar Banki, PO Banki Mongra, Distt. Bilaspur, Madhya Pradesh.
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur).
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2327 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Kirat Kumar S/o. Sri Tilak Kumar, Village Agdoni Kalam PO Baniadhih, Via- Giridih, Distt. Giridih (Bihar)
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2328 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Ram Sunder S/o. Late Basdeo, Qr. No. MD/18, Subhash Block, Korba Colliery, PO Korba Colliery Madhya Pradesh.
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2329 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Chamru S/o. Khulas, Qr. No. D/34,

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Subhash Block, Korba, PO Korba Colliery, Distt. Bilaspur.

2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur).
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2331 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Abdul Kalam, Qr. No.IC/7, J.P. Colony, Korba, PO Korba Colliery (MP) Distt. Bilaspur M.P.
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2332 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Tek Bahadur S/o. Late Chandra Bahadur, at Subhash Block, PO Korba Colliery, Distt. Bilaspur, M.P.
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2333 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Mohd. Attaullah, Ex. Sr. Clerk, Qr. No.1B/70, Banki Colony, PO Bankimongra, Distt. Bilaspur, M.P.

2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2334 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Md. Iltaf Hussain, Qr. No.21/7, Banki Colony, PO Bankimongra, Distt. Bilaspur, Madhya Pradesh.
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2335 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Loki Chamar S/o. Late Hurro Chamar, R/A Village Khandiha, PO SP Colliery Via – Giridih (Bihar)
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.2336 of 1993

Petitioner

South Eastern Coalfields Ltd. through: Chief General Manager, South Eastern Coalfields Limited, Korba East Area, P.O. Korba Colliery, Dist. Bilaspur.

Vs.

Respondents

1. Sri Paul Shaikh, Ex. UDC, Pachamba Mission, Distt. Giridih (Bihar).
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C) Bilaspur.

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3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur).

Writ Petition No.3841 of 1993

Petitioner South Eastern Coalfields Ltd. through: Dy. General Manager, Kurasia Colliery, Distt: Surguja (M.P.)

Vs.

Respondents

1. Sri. P.C. Khasnavis, Ex. Sr. Loading Supdt. P.O. Kurasia Colliery, Distt: Surguja (M.P.)
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C), Shahdol, M.P.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur.

Writ Petition No.3857 of 1993

Petitioner South Eastern Coalfields Ltd. through: Dy. General Manager, Kurasia Colliery, Distt: Surguja (M.P.)

Vs.

Respondents

1. Mr. Paritosh Chakraborty Ex. Sr. Clerk, Kurasia Colliery P.O. Kurasia Colliery Distt; Surguja (M.P.)
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C), Shahdol, M.P.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur.

Writ Petition No.3861 of 1993

Petitioner South Eastern Coalfields Ltd. through: General Manager, SECL, PO Chirimiri, Distt: .Surguja, M.P. (South Eastern Coalfields Ltd. Chirimiri Area, District Surguja, M.P.)

Vs.

Respondents

1. Sri K.M. Khasnabis, Ex. Office Supdt., Chirimiri Colliery, SECL PO Chirmiri, Distt: Surguja (M.P.)
2. Controlling Authority under the Payment of Gratuity Act (Asstt. Labour Commissioner (C), Shahdol, M.P.
3. Appellate Authority under the Payment of Gratuity Act (Regional Labour Commissioner (C), Jabalpur.

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Writ Petitions under Articles 226 and 227 of the Constitution of India.

Present: Shri P.S. Koshy, counsel for the petitioner/ SECL
Shri Gary Mukhopadhyay, counsel for respondents-employees in W.P.Nos.2326/1993 & 3861/1993

ORDER

(Passed on 09 May, 2007)

Since common question of facts and law is involved in all these writ petitions, they are clubbed, heard and disposed of by this common order.

2. Facts in nutshell are:

Petitioner is a Company incorporated under the provisions of the Companies Act and it is a Government of India undertaking. In these writ petitions filed under Articles 226 and 227 of the Constitution of India, the petitioner primarily calls in question the orders passed by the Controlling Authority and the Appellate Authority under the provisions of Payment of Gratuity Act, 1972 and further to hold that the respondents – workmen are not entitled to any of the reliefs under the provisions of Payment of Gratuity Act, 1972, (**"the Act"** for short) in view of the fact that they had opted for service conditions applicable to the Central Government employees.

3. The petitioner – Company owns Coal Mines in Madhya Pradesh (Now Chhattisgarh). One of the areas of the petitioner – Company is situate in Korba and is known as Korba East Area.

4. The respondents were appointed in various collieries before 1952 and all these collieries were owned by State Railways/Central Government. These collieries were subsequently taken over by the Ministry of Production, Government of India and thereafter it was

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transferred to National Coal Development Corporation (NCDC), a Government Company with effect from 1.10.1956. Subsequently, after nationalization of the Coal Mines in the year 1973, the Colliery came under the control of Coal India Ltd. and then to the petitioner i.e. South Eastern Coalfields Ltd.

5. Initially, the respondents were Government employees and their service conditions were governed by the rules and regulations governing the terms and conditions of appointment of employees appointed by the Government of India and all the rules and regulations applicable to the Central Government employees were made applicable to the respondents. When the services of the respondents were transferred to the NCDC Ltd. an option was given to the respondents to opt for the service conditions that were prevailing in NCDC Ltd. or to continue with the service conditions of the previous employer. It is the specific case of the petitioner – Company that the respondents did not opt for the conditions of service that were prevailing in NCDC Ltd., that the respondents had an option either to accept the same terms and conditions regarding leave, gratuity, provident fund etc. as applicable to the Central Government employees or to opt for the benefits that were available to the employees of NCDC Ltd. It is further stated that since the service conditions applicable to the Central Government employees were better, the respondents had opted to remain in Central Government service conditions even on their transfer to NCDC Ltd. It is their further case that the respondents had taken all service benefits including the wage revisions and other benefits applicable to the Central Government employees till they retired from service on attaining the age of superannuation. It is their further case, that, after they retired from service they had applied for gratuity and other pensionary benefits under the Death Cum Retirement Scheme as applicable to the Central Government

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employees, and all the benefits were paid to the respondents. It is the further assertion of the petitioner-Company that the respondents having accepted the gratuity payable to them under the Death cum Retirement Scheme and also after drawing the pensionary benefits, for the first time, they could not have approached the Controlling Authority under the provisions of the Act.

6. The petitioner – Company further asserts that before the Controlling Authority the petitioner – Company had specifically contended that the claim made by the respondents for payment of gratuity under the provisions of the Act is barred by limitation. They had further asserted that they have brought to the notice of the Controlling Authority that under the provisions of Rule 10 of the Payment of Gratuity (Central) Rules, 1972, (**"the Rules"** for short) any claim for payment of gratuity requires to be made within 90 days from the date of cause of action i.e. from the date they retired from service on attaining the age of superannuation. It is further submitted that since the respondents had not filed any application for condonation of delay, the Controlling Authority could not have condoned the delay in making the claim by the respondents for payment of gratuity. They have also stated that they had brought to the notice of the Controlling Authority that the respondents having opted for the benefits under the Death-cum-Retirement Scheme and having availed all the benefits, could not claim the benefits under the Act.

7. It is the case of the petitioner – Company that the Controlling Authority without considering any one of the grounds urged by them has granted the claim made by the respondents and therefore, the order passed by the Controlling Authority requires to be annulled by this Court. At this stage itself, it is pertinent to mention here, that the Controlling Authority being of the view that though the respondents had taken the benefits under the Death-cum-Retirement Scheme applicable to the

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Central Government employees, they are also entitled for the difference of the amount payable under the provisions of the Act and having cum to that conclusion had directed the petitioner - Company to pay the difference of the gratuity amount.

8. Insofar as the delay in filing the application is concerned, the Controlling Authority in its order has stated that it is not mandatory that separate application for condonation of delay requires to be filed. It has further observed that the respondents after making several efforts before the petitioner – Company and having failed to get the benefits under the Act, have approached the Controlling Authority within a reasonable time.

9. The petitioner – Company further asserted that being aggrieved by the order passed by the Controlling Authority, they had filed an appeal before the Appellate Authority under the provisions of the Act. It is their further case that the Appellate Authority taking into consideration the wages fixed under the NCWA had directed the petitioner – Company to pay the gratuity amount of Rs.75,000/- after deducting the payment of gratuity already made to the respondents. It is their case that the Appellate Authority was not justified in confirming the orders passed by the Controlling Authority.

10. At the time of hearing of the writ petitions, Shri P.S. Koshy, learned counsel appearing for the petitioner – Company would submit that the respondents having accepted all the benefits under the Death cum Retirement Scheme and having continued to receive the pensionary benefits, could not have filed any application before the Controlling Authority under the provisions of Act. Therefore, learned counsel submits that though the Act is a beneficial legislation, the employee is not entitled to receive the benefits applicable to Central Government employees and also gratuity under the provisions of the Act. In support of his submission,

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learned counsel has relied upon the observations made by the Apex Court in the case of **Beed District Central Coop. Bank Ltd. Vs. State of Maharashtra and others** reported in **(2006) 8 SCC 514.** Learned counsel specifically points out certain observations made by the Apex Court in para 14 of the judgment.

11. Learned counsel appearing for the petitioner would further submit that under Section 7 of the Act a specific procedure is laid down for claiming gratuity and disposal of the same. Pointing to rule 10 of the Rules, learned counsel would submit that every application for gratuity requires to be filed within 90 days before the Controlling Authority. However, the Controlling Authority can accept an application filed by the employee after expiry of 90 days if sufficient cause is shown by the claimant. According to the learned counsel, in the instant case the respondents after a long lapse of time from the date of retirement from service on attaining the age of superannuation have made claims before the Controlling Authority for payment of gratuity and the Controlling Authority without being satisfied with the explanation offered, could not have condoned the delay. Therefore, the Controlling Authority has erred in accepting the claim made by the respondents-employees.

12. It is their further case that the Controlling Authority and the Appellate Authority should have noticed that the respondents having opted to remain in the terms and conditions of service as provided to Central Government employees way back in the year 1965, could not have claimed any benefits under the provisions of the Act. In sum and substance, the contention of the learned Counsel appears to be that the respondents were entitled either to have gratuity or in the alternative pension or retiring allowance, in case where pension scheme or retiring allowance are in existence and an employee has to choose whether he would receive gratuity or opt for pension. Admittedly respondents have

opted for pension and other pensionary benefits and having started availing all the benefits of pension and gratuity under the Death cum Retirement Scheme from the date of retirement from service on attaining the age of superannuation were not entitled to gratuity under the Act.

13. Lastly, it is stated that the scheme for payment of gratuity Act does not provide the employees who are in receipt of contributory provident fund scheme and also pensionary benefits. Since, the respondents were getting provident fund and having opted for pensionary benefits in lieu of gratuity could not have claimed for payment of gratuity. According to the learned counsel, the contributory fund takes care of the pensionary benefits and pensionary benefits granted over and above the benefits of contributory provident fund is in conformity with various welfare legislations and as such the respondents could not have made any claim for payment of gratuity in addition to the pensionary benefits.

14. Per contra, learned counsel for the respondents would contend that though the respondents were initially appointed in the collieries owned by the State Railways, they were taken over by the Ministry of Production, Government of India which were ultimately transferred to National Coal Development Corporation Ltd. with effect from 1.10.1956 and the respondents were given an option to join the new department or to be continued with the service condition of the previous employer and the respondents opted the service under the NCDC management. Clause 3 of the Government Order provided that in the event of option being given to serve under the NCDC management, the transferred employee shall cease to be in Central Government Service with effect from 1.10.1956. Thereafter, the Coal Mines were nationalized, as a result of this all the collieries including NCDC colliery (Korba Colliery) along with its employees were transferred to the petitioner Company, viz South Eastern Coal Fields Ltd, and the service conditions of the employees

appointed prior to take over by NCDC Ltd were not altered to the prejudice of the respondents. They have further stated that in view of bipartite settlement, the wage structure and other conditions of service including retiral benefits are provided to the workers in the industry under the Wage Board Agreements, it has been specifically provided that the employees shall be entitled to Rs. 75,000/- gratuity which was more than Rs. 25,000/- that is fixed under Section 4(3) of the Act. The respondents further contend that under Section 4(5) of the Act, the employees have the right to receive better terms of Gratuity under any award or contract with the employer and therefore, they are entitled to payment of gratuity of 15 days salary for each completed year of service for the first 30 years and for the period beyond 30 years, one month's salary for each completed year of service.

15. The learned counsel appearing for the respondents would reiterate the assertions made in the returns filed before this Court and in aid of his submission, he relies on the observations made by the Apex Court in the case of **Som Prakash Rekhi Vs. Union of India and another** reported in **(1981) 1 SCC 449** wherein the Apex Court has observed as under:

> "**66**. The public policy behind the provisions of Sections 10, 12 and 14 of the respective Statutes is clear. We live in a welfare State, in a 'socialist' republic, under a Constitution with profound concern for the weaker classes including workers (Part IV). Welfare benefits such as pensions, payment of provident fund and gratuity are in fulfillment of the directive principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a "set-off". Otherwise, the solemn statutory provisions ensuring provident fund and gratuity become illusory. Pensions are paid out of regard for past meritorious services. The root of

gratuity and the foundation of provident fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. Even assuming that by private treaty parties had otherwise agreed to deductions before the coming into force of these beneficial enactments they cannot now be deprivatory. It is precisely to guard against such mischief that the non *obstante* and overriding provisions are engrafted on these statutes.

67. We must realise that the pension scheme came into existence prior to the two beneficial statutes and Parliament when enacting these legislations must have clearly intended extra benefits being conferred on employees. Such a consequence will follow only if over and above the normal pension, the benefits of provident fund and gratuity are enjoyed. On the other hand, if consequent on the receipt of these benefits there is a proportionate reduction in the pension, there is no real benefit to the employee because the Management takes away by the left hand what it seems to confer by the right, making the legislation itself left-handed. To hold that on receipt of gratuity and provident fund the pension of the employees may be reduced pro tanto is to frustrate the supplementary character of the benefits. Indeed, that is why by Sections 12 and 14 overriding effect is imparted and reduction in the retiral benefits on account of provident fund and gratuity derived by the employee is frowned upon. We, accordingly, hold that it is not open to the second respondent to deduct from the full pension any sum any sum based upon Regulation 16 read with Regulation 13. If Regulation 16 which now has acquired statutory flavour, having been adapted and continued by statutory rules, operates contrary to the provisions of the PF Act and the Gratuity Act, it must fail as invalid. We uphold the contention of the petitioner.

16. Reference is also made to the observations of the Apex Court in the case of **Katheeja Bai Vs. Superintending Engineer and others,** reported in **(1984) 3 SCC 518.** In the said decision the Apex Court has observed that provident fund regulation providing the employee's special contribution to provident fund payable to good, efficient and faithful employees, in addition to employer's usual provident fund contribution is not an alternative to gratuity payment and the employer having itself described it as its provident fund contribution must ordinarily be paid in addition to gratuity after retirement and denial of such provident fund to an employee who retired after a long and satisfactory service, on the ground of payment of gratuity to him is violative of fundamental rights.

17. Nearer to the issues involved in this case, is the decision of the Apex Court in the case of **Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and another** reported in **(1998) 7 SCC 221.** That was a case where Municipal Corporation, Delhi had adopted the CCS (Pension) Rules, 1972, which both, pension and gratuity payments. Since the gratuity was not paid under the provisions of Payment of Gratuity Act, the employee had approached the Controlling Authority, who had awarded an extra amount of gratuity under the Payment of Gratuity Act, 1972 and after unsuccessfully challenging the order before the High Court, the Corporation had filed an appeal before the Supreme Court. The Court while disposing of the appeal has observed:

> "The mere fact that the gratuity is provided for under the Pension Rules will not disentitle an employee from getting the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provisions for gratuity under the Pension Rules will have no effect. Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the

operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Appellant municipality has not taken any steps to invoke the power of Central Government under Section 5 of the Payment of Gratuity Act. Therefore, the employees of the MCD would be entitled to the payment of gratuity under the Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. However, the employees cannot claim gratuity available under the Pension Rules as well."

18. Before considering the issues involved in these petitions, let me first answer how the decision relied on by learned Counsel Shri P.S. Koshy would not assist him in aid of his submission before this Court that the respondents having opted the pension and other pensionary benefits and having started availing of the benefit of pension and gratuity under death-cum-gratuity Rules ever since his retirement was not entitled to gratuity under the Payment of Gratuity Act.

19. The Beed District Central Coop. Bank Ltd (***Supra***). was the appellant before the Apex Court. The respondents are its employees. A policy decision was taken by the bank to extend the benefit of better rate of gratuity to a large number of its employees. A scheme was formulated which was linked with the policy of Life Insurance Corporation of India who were on its rolls. In the said scheme the rate of gratuity was to be calculated on one month's salary for every completed year of service with a ceiling limit of 20 months salary. The employees of the Bank accepted the said scheme and availed the benefits thereof. The said scheme was amended providing the payment of gratuity at the rate of 26 days salary for every completed year of service with a ceiling limit of Rs.1.7 lakhs and the said scheme was in force from May 1994 to

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24.9.1997, yet again the scheme was floated raising the limit of Rs. 1.7 lakhs to Rs. 2.50 lakhs.

20. In terms of Payment of Gratuity Act, 1972, the Ceiling limit of the amount of gratuity was raised to Rs. 2.50 lakhs. The Ceiling limit was later on increased to Rs. 3.50 lakhs by reason of amendment made by the Payment of Gratuity (Amendment) Act, 1998 which was given a retrospective effect from September 1997. However, the rate of Gratuity to be determined at the rate of 15 days salary for every completed year of service.

21. The respondents on retiring from service on attaining the age of superannuation received all the benefits under the Scheme namely the Gratuity was calculated at the rate of 26 days salary for every year of completed service and the ceiling limit that was applied was 1.7 lakhs and 2.50 lakhs for those respondents who retired between the period 20.7.1996 and 30.11.1999 and the period 1.12.1999 and 17.1.2005 respectively. However, the respondents raised a claim that they were entitled to take benefit under both the schemes, and also Payment of Gratuity Act i.e. the scheme provided for Payment of Gratuity Act at the rate of 26 days salary for every completed year of service but not the ceiling limit of Rs. 2.50 lakhs but the ceiling limit as provided under the Payment of Gratuity Act, which provided a ceiling limit of Rs. 3.50 lakhs as amended by Payment of Gratuity (Amendment) Act, 1998 which was given retrospective effect from September, 1998. In a scenario like this, the Court was pleased to observe that the workmen cannot choose to take the benefit of part of the scheme and then again claim a part of the benefit under the Payment of Gratuity Act. While coming to the aforesaid conclusion, the Court was pleased to observe as under:

"**14.** Applying the "golden rule of interpretation of statute", to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. When better terms are offered, a workman takes it as a part of the package. He may volunteer therefore, he may not. Sub-section (5) of Section 4 of the 1972 Act provides for a right in favour of the workman. Such a right may be exercised by the workman concerned. He need not necessarily do it. It is the right of individual workman and not all the workmen. When the expression "terms" has been used, ordinarily it must mean" all the terms of the contract". While interpreting even a beneficent statute like, the Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute. The provisions of the Act envisage for one scheme. It could not be segregated. Sub-section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While reserving his right to opt for the beneficent provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both. If such an interpretation is given, the spirit of the Act shall be lost."

22. The Payment of Gratuity Act is a special Act for the benefit of employees, wherein a machinery has been provided by the legislature to adjudicate and decide cases arising between employers and employees in regard to payment of gratuity. The Act provides for the payment of gratuity to all employees irrespective of wages drawn employed in factories, plantations, shops, establishments, mines etc., in the even of superannuation, retirement, resignation and death or disablement due to accident or disease. It is the duty of the employer to determine the

amount of gratuity as soon as it becomes payable and to give notice of the same to the person to whom the gratuity is payable and also to the contributing authority. The employer shall also arrange to pay the amount of gratuity to the person whom it is payable within thirty days from the date it becomes payable, the employer is to complete the formalities for payment of gratuity and failure to do so would render him liable to pay interest at the rate of 10%. Since the employer had not settled the gratuity as was payable under the Act, the respondents and others were agitating their claims before the employer. Since the same was not settled, the respondents had no other alternative but to approach the Controlling Authority under the Act. It is true that there was some delay in approaching the Controlling Authority by the respondents, but, in my opinion, that delay itself would not disentitle the respondents from getting what is due to them from the employer. The only requirement is that the Controlling Authority must be satisfied that there was sufficient cause for the delay in presenting the application. The very fact that the Controlling Authority accepted the application on its file and choose to consider on merits indicated that he was satisfied with the reason stated by the workmen to condone the delay. The Appellate Authority also considered this aspect and observed that it must be presumed that the Controlling Authority was satisfied with the reasons stated by the workmen to condone the delay. In my view since both the fact finding Authorities have accepted the application filed by the workmen and have decided the case on merits, it may not be proper to me to unsettle their view in exercise of my jurisdiction under Article 227 of the Constitution. In that view of the matter, the first contention canvassed by learned counsel for the petitioner cannot be accepted by me and accordingly it is rejected.

23. Section 4 of the Act provides for payment of gratuity and the same shall be payable to an employee on the termination of his employment

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after he has rendered continuous service not less than five years. Sub-Section (5) of Section 4 of the Act starts with an '*non-obstante*' clause and provides that nothing in Section 4 of the Act shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Section 14 of the Act overrides all inconsistencies that may occur in the orders or rules issued and framed under the Act and any other law for the time being in force.

24. In the instant case, after nationalization of the Coal industry, the National Coal Wage agreements were entered into by the parties providing for the wage structure and other conditions of service including the retrial benefits such as pension, gratuity etc., were provided for the workers in coal industry. Under this agreement the maximum limit of payment of gratuity had been fixed at Rs.75,000/-. In view of Sub-Section (5) of Section 4 of the Act read with Section 14 of the Act, the employee can avail the benefit under the Payment of Gratuity Act; but, if he has availed the benefit under the Wage Board Agreement, to that extent the benefit under the Payment of Gratuity Act can be denied to him. Therefore, in my view both the authorities under the Act were justified in allowing the claim of the respondents – employees.

25. In view of the above discussion, the petitions require to be rejected and accordingly they are rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

Sd/-
Chief Justice